

STATINTL

Approved For Release 2003/05/27 : CIA-RDP84-00780R003400060024-5

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No Appeal Seen

Anti-Strike Oath Now Dead Issue

By Dennis Mullin

WASHINGTON—The federal employe anti-strike oath appears to be a thing of the past, as the Justice Department has changed its mind and decided not to appeal a court decision banning the oath.

The appeal stemmed from a successful case in which the National Association of Letter Carriers went to court over the constitutionality of the oath and won.

The government had intended to appeal the case and it was scheduled to come up before the Supreme Court this fall. The high court however recently issued a brief order dropping the appeal at the government's request.

The reasons given by the Justice Department for dropping the case center around the postal reorganization act and the fact that the status of postal workers has been changed.

This does not explain, however, the government's stand on the dropping of the oath for all federal agencies including departments concerned with national security.

Apparently the case is officially closed though the Civil Service Commission is reserving judgment while it negotiates with the Justice Department. It has not ordered a change of the employment forms yet as the possibility exists that Justice Department may initiate action in the future to exclude people in the CIA and FBI and other security agencies.

The government was known to be upset with the strength of the decision of Judge Gerhard Gesell of the U.S. District Court of the District of Columbia. In his decision the judge said that the oath had a "chilling effect" on federal employe union activity and limited freedom of expression guarantees of the first amendment.

Part of the oath required the employe to swear that he was not and would not become a member
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of an organization of government employees that asserted the right to strike. Referring to this clause the judge said that it was absurd, "to think that the ordinary employee (could read the oath) and conclude that he may argue for the right to strike with impunity."

The right to strike has received a great deal of attention since the postal walkout last March, and it is presently being challenged in the courts by the United Federation of Postal Clerks. The refusal of the Justice Department to further challenge the oath, has no bearing on the right of federal workers to strike.

During the original NALC case, government attorneys argued that any decision on the oath was unnecessary as no punitive action had

ever been taken against an employee under provisions of the oath.

The court concluded, however, that regardless of penalties the oath damaged federal employees by tending to curtail freedom of speech through the specter of prosecution.

The NALC attack was directed against Clause C of POD form 61 specifically, the form all postal workers are forced to sign before joining the payroll. All other agencies in government require their employees to sign similar forms, and these forms apparently are invalidated by the appeal dismissal.

Ordinarily district court cases are appealed through U.S. Appeals Courts before going on to the Supreme Court, however since the anti-strike suit involved the constitutionality of a federal statute it was appealed directly.

When and if the Civil Service Commission prints its new forms without the anti-strike oath they will also be knocking another oath off the old form. The "non-subversive" oath which required employees to swear that they did not advocate the overthrow of the government was also recently voided by a three judge federal court.

Although the nonsubversive oath was invalidated in 1968 and never repealed, it has remained on the CSC forms to date. The commission has said that it will tell an applicant that he need not respond to the subversive oath only if he inquires about it.

The stand taken by the Justice Department has raised questions about the status of the right-to-strike case, even though the new Postal Service is armed with a no strike law. The newly created legal status of postal employees may alter the course of that litigation.

The exact language of the oath was:

"I do not and will not assert the right to strike against the government of the United States and I am not knowingly a member of an organization of government employees that asserts the right to strike against the government of the United States or any agency thereof and I will not while an employee of the government of the United States knowingly become a member of such an organization."

11-1558-100780700340006002